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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,894	07/13/2007	Heiner Rinsche	RINSCH EI	4397
1444 7590 01/15/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
TRIGGS, ANDREW J				
ART UNIT		PAPER NUMBER		
3635				
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01/15/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/590,894

**Applicant(s)**

RINSCHKE, HEINER

**Examiner**

Andrew J. Triggs

**Art Unit**

3635

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. The Examiner acknowledges the cancellation of claims 1-9 and the newly added claims 10-12.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification states that the short plastic knobs are formed by injection molding. However, the amendment to the claim states that the knobs are formed by injecting them after the spacer is placed in the groove.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haid, US Patent # 4,599,841 in view of Kellner, US Patent Application Publication # 2004/0144050.

Regarding claim 10, Haid teaches, in Figure 1 floor panels (1) of which are laid at a distance from each other next to each other and comprise, a groove (9) which is arranged on the lateral surfaces thereof. Haid also teaches a plastic spacer (5) is arranged between adjacent floor panels (1), said spacer supporting a clamping crosspiece (7) on both sides thereof in a clamped manner in the respective groove (9). The panels (1), at their upper edges, exhibit a chamfer. The clamping crosspieces (7) present, towards the top, an essentially flat reference surface. Figure 2 shows retaining lamellas (8) of a conical shape and Figure 3 shows short plastic knobs (8). It would be obvious to try both of these configurations in order to come up with a system that works the best, such as retaining lamellas on the bottom and plastic knobs on the top. Haid does not teach a soft sealing member at the top of the spacer or that the floor panels are that of natural stone. However, Kellner teaches, in figure 4a, a piece (11) on top of a spacer (9) that is of a softer material (Page 2, Paragraph 23) that helps seal the gap between panels and would seal in the chamfered area of the panels of Haid. Kellner also teaches, in Claim 2, that the panel (1) is that of natural stone. One of ordinary skill in the art at the time of the invention would have been motivated to include the softer cap material of Kellner with the spacer of Haid in order to provide a seal between the stone panels. The applicant should note, regarding the injection of the soft plastic knobs, that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of

production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time of the invention.

Regarding claim 11, Haid in view of Kellner teach a natural stone floor panel.

Furthermore, Haid teaches, in Figure 1, that the grooves (9) in the panels (1) are formed in the sides of the panels (1) and are opposite an identical groove in an adjacent panel. Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time of the invention.

Regarding claim 12, Haid in view of Kellner teach a natural stone floor panel. Both Haid and Kellner are silent as to the exact dimensions of the grooves of the floor panels. However, it would have been an obvious matter of design choice to make the grooves the exact dimensions as described by the applicant because a change of size is generally recognized as being within the level of ordinary skill in the art. Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time of the invention.

### ***Response to Arguments***

6. Applicant's arguments filed 15 December 2008 have been fully considered but they are not persuasive.

First of all, the arguments are directed toward the newly added claims and since the previously rejected claims were cancelled, the arguments have little weight. For

arguments sake, the first argument is directed to the traversal of the combination of Haid in view of Kellner and that they don't have the injected short plastic knobs. This argument is rejected by the 35 USC 112 rejection since the specification states these are injection molded and not injected after the spacer is installed. The second argument is that neither of the references have a softer more flexible plastic fixed against the corner chamfers of the stone panels. However, the chamfered panels are shown by Haid and Kellner teaches a softer material atop the spacer that in combination with Haid would be fixed against the chamfers in the panel.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Triggs whose telephone number is 571-270-

3657. The examiner can normally be reached on Monday through Thursday 7:00am - 5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

/Andrew J Triggs/  
Examiner, Art Unit 3635